

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Creation of A Low Power Radio Service)

Docket No. 99-25

SUPPLEMENT
TO THE REPLY COMMENTS OF DON SCHELLHARDT, ESQUIRE KI4PMG
TO NICKOLAUS E. LEGGETT N3NL

On March 7, 2012, acting in response to a media report regarding the Commission's attitude toward the licensing of 1-10 watt Low Power FM (LPFM) stations, I sent a letter to each of the Commissioners on behalf of THE AMHERST ALLIANCE -- which I co-founded and currently lead. A copy of this letter was placed in FCC Docket 99-25.

In that letter, THE AMHERST ALLIANCE gave the Commission fair warning that it appeared to be greatly under-estimating the level of support, within the nation's LPFM community, for the licensing of 1-10 watt LPFM stations in highly urban areas. Amherst stressed that the LPFM community's support for the licensing of 100-250 watt stations *outside of* highly urban areas should not be construed as indifference to 1-10 watt stations *inside of* highly urban areas. In fact, Amherst reported that a poll of its own Members showed unanimous support for prioritizing urban LP10s over rural LP250s, *if* Members were forced to choose.

Don Schellhardt, Esquire KI4PMG
May 28, 2012
Page Two

Despite Amherst's March 7 letter to the Commissioners, the FCC decided -- 12 days later -- to include in its LPFM rulemaking a proposal to eliminate 1-10 watt LPFM stations completely, even in the most urban 1% of America's land area. The Commission presented this proposal to the public without one single word of explanation or justification.

Events since March 19 have demonstrated clearly that the entire LPFM community -- THE AMHERST ALLIANCE, REC NETWORKS, PROMETHEUS RADIO PROJECT, COMMON FREQUENCY, CONEXUS LPFM ADVOCACY, CHRISTIAN COMMUNITY BROADCASTERS and others -- speaks with one voice to advocate the licensing of 1-10 watt LPFM stations, as well as 11-49 watt stations, in highly urban areas.

Speaking personally, rather than on behalf of THE AMHERST ALLIANCE, I have now filed individual Reply Comments -- on May 21, 2012 -- which give the FCC fair warning of a legal challenge if the final regulations do not allow LPFM stations below 50 watts.

I have recently heard totally unofficial reports that the FCC now plans to license *only* 1-49 watt LP50 stations within the center city areas of the Top 100 Arbitron Markets -- and *only* 101-250 watt LP250 stations everywhere else. Personally, I would be absolutely delighted by this result (although I would still modify the LP250 licensing through adoption of the proposal in the May 21 personal Written Comments by Wesli AnneMarie Dymoke and myself).

Don Schellhardt, Esquire KI4PMG
May 28, 2012
Page Three

Still, until and unless the Commission makes an official and binding decision to allow the licensing of LPFM stations below 50 watts, at least in highly urban areas, I have no practical choice but to “keep my power dry” -- and, indeed, “enhance my deterrent capability” by recruiting as many allies as I can for the possible outbreak of legal combat.

\

To this end, I am Attaching to this document a series of other documents related to preparation for a possible lawsuit on behalf of 1-49 watt LPFM stations in highly urban areas. These other documents include a press release, an Appeal To The Public for support, an Appendix indicating where 1-49 watt LP50 stations should be allowed *and* a resume (so that interested parties may assess my potential firepower as an advocate).

Respectfully submitted,

Don Schellhardt, Esquire
3250 East Main Street
#48
Waterbury, CT 06705
djslaw@gmail.com
(203) 982-5584

Dated: May 28, 2012

COMMUNITY RADIO ACTIVIST BLASTS

FCC'S PROPOSED BAN ON SMALL LOW POWER RADIO STATIONS

Don Schellhardt, an attorney who helped to start up the nation's current Low Power FM (LPFM) Radio Service in 2000, is trying to rally public opposition against a proposed ban on the smallest of these community radio stations. A proposal by the Federal Communications Commission (FCC), in Docket 99-25, would set the minimum size for such stations at LP100 (50-100 watts). If LPFM stations smaller than 50 watts are banned by the FCC, far fewer LPFM stations would be able to "fit" into the frequently crowded radio spectrum in urban areas.

According to Schellhardt, the FCC's proposed ban would eliminate more than half of the potential LPFM stations in America's urban areas. Under the proposal, the cities of Los Angeles and San Francisco would lose 4 out of every 5 potential LPFM stations, while the cities of New York and Detroit would be allowed no LPFM stations at all.

Schellhardt is asking individuals and groups to sign a Petition to the FCC. Interested parties are urged to contact him at djlaw@gmail.com

If the FCC's final regulations retain the proposed ban, a Petition For Reconsideration will be filed. If the Petition is then denied, its denial would open the door to a lawsuit, aimed at ordering the FCC to lift the ban. Parties could also seek a protective injunction, ordering the FCC to suspend all urban radio station licensing while the court considers the underlying lawsuit.

Don Schellhardt Press Release

LPFM Radio Stations Below 50 Watts

May 28, 2012

Page Two

Schellhardt claims to have three powerful legal arguments for challenging the FCC, should the FCC invite a lawsuit by proceeding with its proposal. First, he asserts, the FCC has already violated the Administrative Procedure Act by issuing a major proposal “without one single word of explanation or justification”. Second, he contends, the proposal, if adopted, would violate the Fourteenth Amendment to the U.S. Constitution (“Equal Protection of the Laws”) by “disproportionately eliminating potential LPFM stations in the cities, where racial and ethnic minorities are disproportionately concentrated”. Third, he maintains, the proposal, if adopted, would exceed even the FCC’s “broad discretion” under the Local Community Radio Act “by eliminating more than half of the urban stations that Congress mandated”.

Schellhardt also states that “The only beneficiaries of the FCC’s proposal would be special interests: media megacorporations and National Public Radio.” These “special interests”, he declares, “would be able to avoid increased competition in the highly urban markets they hold most dear.”

APPEAL TO THE PUBLIC
BY DON SCHELLHARDT, ESQUIRE,
SEEKING SUPPORT FOR A POSSIBLE LAWSUIT AGAINST THE FCC
TO ALLOW 1-49 WATT URBAN LOW POWER FM (LPFM) COMMUNITY RADIO

May 28, 2012

Today is Memorial Day. It is a day we Americans have set aside to honor those who died in defense of America and its freedoms. However, not all of those who threaten America's freedoms -- and the basic concept of what America *means* -- rely on force of arms, and not all of them reside abroad. So today, of all days, seems a fitting time to stand against those who would challenge our freedoms, and our very concept of ourselves, on a different kind of battlefield -- where freedoms are lost not to missiles but to money, and political connections.

In the particular case I have in mind today, the enemies of freedom are media megacorporations *and* -- their image of idealism notwithstanding -- National Public Radio. These institutions collectively dominate the radio airwaves of America. In spite of their overwhelming dominance, however, they have still fought ruthlessly, and relentlessly, to deny FCC licenses to any radio stations which fall outside their orbits of control. Their targets have included essentially *any* community radio station that is not controlled by NPR.

In 2010, after a 10-year battle, Congress chose to expand the small but exciting Low Power FM (LPFM) Radio Service: over 800 small and *independent* community radio stations.

Don Schellhardt
Appeal To The Public
May 28, 2012
Page Two

Now, under the Local Community Radio Act, the number of LPFM stations could rise from several hundred to several thousand, opening up the country's radio waves to a host of new and *independent* voices. Further, LPFM stations could begin to penetrate their "last frontier": the highly *urban* areas of America. There, LPFM stations have been scarce because the airwaves are already so crowded -- and it has been hard to find frequencies for new stations, even if they are *Low Power* stations which require only tiny portions of the radio spectrum.

Personally, I want to see LPFM thrive -- very much. Along with Nickolaus Leggett, of Reston, Virginia, I was the first person to Petition the FCC for a Low Power FM Radio Service, back in 1997. Three years later, thanks to the efforts of many, many people, the FCC established LPFM. After that, the media megacorporations *and* NPR launched a legislative counterattack to preserve their collective monopoly. I testified before a Congressional Committee, and engaged in other Congressional lobbying, to forge a compromise that kept Congress from abolishing LPFM completely. Since then, my life has been dedicated to the survival, and eventual expansion, of LPFM community radio. For the past 15 years overall, the birth and growth of Low Power FM Radio have been my primary Life Task.

I have, I believe, served the nation as my own kind of soldier.

Don Schellhardt, Esquire

Appeal To The Public

May 28, 2012

Page Three

Implementation of the Local Community Radio Act could culminate the dreams of many, many Americans for robust LPFM community radio in *every* corner of America, *including* the centers of our largest cities.

However, the FCC has a great deal of power over how the new statute will be converted into specific new regulations. While *almost* all of the FCC's decisions so far have been wise, *and* fully explained to the public, there has been one terrible, terrible exception. *Without offering the public one single reason for its decision*, the Federal Communications Commission has proposed to ban all Low Power FM stations, everywhere, which broadcast at less than 50 watts Effective Radiated Power (that is, which fall below the LP100 class of stations).

As a practical matter, most urban LPFM stations *have* to broadcast below 50 watts in order to "find a hole in the radio spectrum" that can accommodate them. That is: Most of the stations above 50 watts will not "fit" into the crowded urban radio spectrum. Thus, a ban on LPFM stations below 50 watts is, in effect, a ban on most urban LPFM stations. Period.

According to research by REC NETWORKS of Maryland and COMMON FREQUENCY of California, the FCC's proposal would eliminate *almost 4 of 5 potential LPFM stations* (11 out of 14) in the cities of New York, Los Angeles and San Francisco. New York City would lose its one potential 40 watt station. Detroit would lose its single 10 watt station.

Don Schellhardt, Esquire

Appeal To The Public

May 28, 2012

Page Four

Nationwide, across urban America, more than *half* of all potential LPFM stations would be eliminated -- all without one single word of explanation or justification from the FCC.

Banning LPFM stations below 50 watts would cut the heart out of urban LPFM.

Again: I cannot tell you *why* the FCC is proposing this policy. It has yet to offer the public one single word of explanation or justification.

However, I *can* answer this question: “Qui bono?” Who benefits?

The *only* beneficiaries of the FCC’s proposal would be media megacorporations and National Public Radio. At a *huge* cost to everyone else, they would avoid increased competition for the highly urban markets they hold most dear.

Money and political connections would defeat conscience and community. *Again.*

This time, however, I can do something about it. I’m a lawyer. I can sue the FCC.

Further, the legal arguments are strong ones:

1. The FCC has already violated the Administrative Procedure Act -- by proposing a truly *major* policy without providing one single word of explanation or justification.

2. If the proposal to ban LP50 stations (at 1-49 watts) is adopted, the FCC will also violate the Fourteenth Amendment to the Constitution: “Equal Protection of the Laws”. It will do so by disproportionately eliminating potential LPFM stations in cities, where racial and

Don Schellhardt, Esquire

Appeal To The Public

May 28, 2012

Page Five

ethnic minorities are disproportionately concentrated. Court precedents have held that such discriminatory effects, even when they are unintended, are legal *only* if there is a “compelling public interest” to justify the discrimination. Yet here the general public actually *loses* ground and the *only* beneficiaries are special interests: media megacorporations and NPR. In addition, the FCC has not provided any reason for its proposal at all, let alone a “*compelling*” reason.

3. Further, if the proposal to ban LP50 stations (at 1-49 watts) is adopted, the FCC will violate the recently enacted Local Community Radio Act -- which directs the FCC to take reasonable action to maximize the availability of radio frequencies for LPFM stations (and also FM translators). Of course, under the Act, and indeed under general principles of administrative law, the FCC has considerable discretion regarding how to carry out this directive. However, can the Commission stretch “discretion” far enough to allow the elimination of *every* potential LPFM station in New York City and the City of Detroit? Four fifths of the potential LPFM stations in the Cities of Los Angeles and San Francisco? Plus hundreds more?

It is highly debatable whether even *broad* “discretion” can be stretched far enough to allow the FCC to eliminate more than half of the urban LPFM stations that Congress mandated.

So The Good News is:

I’m a “fired up” lawyer with a dynamite case for The People.

Don Schellhardt, Esquire

Appeal To The Public

May 28, 2012

Page Six

The Bad News is:

I'm one of those "poor but honest lawyers" you occasionally hear about. I don't have the financial or logistical resources to beat the media megacorporations, NPR and the FCC in a major court case -- *unless* I can recruit help from people like you.

However, don't send me money -- at least not yet. **Send me your signature ...** and your E-Mail address ... and your snail mail address.

Send them to me, Don Schellhardt, Esquire, at djlaw@gmail.com

If the FCC issues final regulations on LPFM which do not allow stations below 50 watts in highly urban areas, *then* I will file a Petition For Reconsideration. I will put your name and addresses on it, along with my own name and the names of others. This will not cost you a cent.

If the Petition For Reconsideration is denied, *then* I will ask you whether you would like to join me in a lawsuit against the FCC.

Your signature on the Petition For Reconsideration will give you the legal *right* to join me in a lawsuit, if one becomes necessary, but you will not be under any *obligation* to join me.

When and if the circumstances I have described come to pass, you will have *at that time* the choice of whether you wish to become more involved.

Don Schellhardt, Esquire

Appeal To The Public

May 28, 2012

Page Seven

I urge each of you to follow the lead of the fallen veterans who fought for America and its freedoms. Join an ongoing battle for freedom today. Send your signature, E-Mail address and snail mail address to me, Don Schellhardt, Esquire, at djlaw@gmail.com

Thank you!

LET THE CITIES IN!!

A Special Legal Project

Don Schellhardt, Esquire

3250 East Main Street

#48

Waterbury, CT 06705

djlaw@gmail.com

(203) 982-5584

APPENDICES

LET THE CITIES IN!!

IF

**THE FEDERAL COMMUNICATIONS COMMISSION (FCC)
DECIDES TO LICENSE 1-49 WATT LP50 STATIONS
IN THE MOST URBAN 1% OF AMERICA ...**

**WE COULD MORE THAN DOUBLE
THE NUMBER OF URBAN LOW POWER FM (LPFM)
COMMUNITY RADIO STATIONS**

To express YOUR support for urban LP50 stations, please contact:

Don Schellhardt, Esquire

djlaw@gmail.com

Please include your name, snail mail address and E-Mail address. Thank you.

Don Schellhardt, Esquire

djlaw@gmail.com

5/23/12

Appendix A: 2.

Support licensing of LP50 stations, with 1-49 watts, in the most urban 1% of America.

A. TOP 20 ARBITRON MARKETS

Allow LP50 stations within 18 miles of the center of these center city areas:

1. New York City
2. Los Angeles
3. Chicago
4. San Francisco
5. Dallas-Fort Worth
6. Houston-Galveston
7. Philadelphia
8. Washington, DC
9. Atlanta
10. Boston
11. Detroit
12. Miami-Fort Lauderdale
13. Seattle-Tacoma
14. Puerto Rico
15. Phoenix
16. Minneapolis-Saint Paul
17. San Diego
18. Nassau County-Suffolk County (Long Island, NY)
19. Tampa-Saint Petersburg
20. Denver-Boulder

Don Schellhardt, Esquire

djlaw@gmail.com

5/23/12

Appendix A: 3.

B. ARBITRON MARKETS 21-50

Allow LP50 stations within 12 miles of the center of these center city areas:

21. Baltimore
22. Saint Louis
23. Portland, OR
24. Charlotte-Gastonia, NC
25. Pittsburgh
26. Riverside-San Bernardino, CA
27. Sacramento
28. San Antonio
29. Cincinnati
30. Cleveland
31. Salt Lake City-Ogden
32. Las Vegas
33. Kansas City
34. Orlando
35. Columbus, OH
36. Austin
37. San Jose
38. Milwaukee-Racine, WI
39. Middletown-Newburgh, NY
40. Indianapolis
41. Middlesex County-Somerset County, NJ
42. Providence-Warwick
43. Raleigh-Durham
44. Norfolk-Virginia Beach
45. Nashville
46. Greensboro-Winston Salem

Don Schellhardt, Esquire

djlaw@gmail.com

5/23/12

Appendix A: 4.

- 47. New Orleans
- 48. Oklahoma City
- 49. West Palm Beach-Boca Raton, FL
- 50. Jacksonville, FL

C. ARBITRON MARKETS 51-100

Allow LP50 stations within 6 miles of the center of these center city areas:

- 51. Memphis
- 52. Hartford-New Britain
- 53. Monmouth County-Ocean County, NJ
- 54. Louisville
- 55. Buffalo-Niagara Falls
- 56. Richmond
- 57. Rochester, NY
- 58. McAllen-Brownsville, TX
- 59. Birmingham
- 60. Greenville-Spartanburg, SC
- 61. Tucson
- 62. Fort Myers-Naples, FL
- 63. Dayton
- 64. Honolulu
- 65. Albany-Schenectady-Troy
- 66. Tulsa
- 67. Fresno
- 68. Albuquerque
- 69. Grand Rapids
- 70. Allentown-Bethlehem

Don Schellhardt, Esquire

djlaw@gmail.com

5/23/12

Appendix A: 5.

71. Wilkes Barre-Scranton
72. Knoxville
73. Des Moines
74. Omaha- Council Bluffs
75. El Paso
76. Sarasota-Bradenton, FL
77. Bakersfield
78. Akron
79. Wilmington, DE
80. Harrisburg-Lebanon
81. Baton Rouge
82. Greenville-New Bern, NC
83. Charleston, SC
84. Little Rock
85. Syracuse
86. Gainesville-Ocala, FL
87. Stockton
88. Monterey-Salinas
89. Columbia, SC
90. Portland, ME
91. Springfield, MA
92. Colorado Springs
93. Spokane
94. Daytona Beach
95. Toledo
96. Lakeland-Winter Haven, FL
97. Mobile
98. Fort Pierce-Stuart, FL
99. Wichita
100. Madison, WI

LET THE CITIES IN!!:

Don Schellhardt, Esquire, 3250 East Main Street, #48, Waterbury, CT 06705

DON SCHELLHARDT
3250 East Main Street, #48
Waterbury, CT 06705
djlaw@gmail.com
(203) 982-5584

Lawyer lobbyist, writer, negotiator seeks challenging new Life Task in advocacy.

All achievements were accomplished as one essential part of a team.

**MOST RECENT LIFE TASK (NEARING COMPLETION), 1997-NOW:
INITIATE AND EXPAND LOW POWER FM (LPFM) COMMUNITY RADIO**

Organizing supporters of urban LPFM for possible group litigation, 2012-now
Lead grassroots advocacy on FCC regulations to expand LPFM Radio Service
(from 800 to 5,000+ stations), 2011-Now
Helped to persuade Congress to enact Local Community Radio Act, 2005-2010
Led multi-party Freedom of Information Request to release key technical data
needed for more Congressional action, 2004
Conceived and lobbied for political compromise which persuaded Congress not
to ban all LPFM stations, 2000
Led grassroots advocacy to establish LPFM (from 0 to 800 stations), 1998-2002
Founded and led THE AMHERST ALLIANCE (lobbying group), 1998-Now
Co-authored Petition For Rulemaking to establish small (100 watt), local,
community-focused LPFM stations, 1997-1998

Secondary activities: Enhancing Emergency Communications

Lead grassroots advocacy on FCC/Homeland Security study of whether to
override Homeowners' Association (HOA) bans on Amateur Radio antennas, 2012-Now
Lobby for FCC override of HOA antenna bans, 2003-Now
Founded and lead HAMS FOR ACTION (lobbying group), 2003-Now

Tertiary activities: Representing Family Law Clients In Court

Represented children in court as Guardian Ad Litem in Virginia, 2000-2001
Served low-income clients as Blue Ridge Legal Services attorney, 1999-2000

PERIOD OF EXPLORATION, 1992-1998

Assisted judges in CT as Law Clerk (New Haven trial court), 1995-1998

Wrote novel (political love story), 1992-1995

PREVIOUS LIFE TASK, 1973-1992:

INCREASE DEMAND FOR U.S. NATURAL GAS, PRODUCE MORE U.S. ENERGY

Advised U.S. EPA and State Public Utilities Commissions (DC, MD, WI) as consultant on policies to promote natural gas and energy efficiency, 1991-1992

As U.S. EPA Policy Advisor on global warming (GS-15), developed Green Lights program to mitigate global warming through increased energy efficiency, 1990-1991

As Government Relations executive (American Gas Association Director of State, Local and Coalition Relations), backed steps to promote Natural Gas Vehicles and Electric Vehicles in CA, AZ, OK, LA and TX, 1986-1990, and enact acid rain control legislation, 1987-1990

As Government Relations executive (American Gas Association Director of Legislative and Regulatory Affairs), developed and successfully pursued action agenda (natural gas price deregulation, end of limits on gas use in power plants), 1978-1987

As Congressional staffer (House Energy and Commerce Committee), speeded approval of Alaskan oil pipeline and U.S. natural gas price deregulation, 1973-1978

EDUCATION

M.A. Liberal Studies (Politics), Hollins University, Roanoke, VA, 2005-2008

M.A. includes coursework (East Asian Studies), Asia Pacific program, Center for the Pacific Rim, University of San Francisco, San Francisco, CA, 2005

THESIS (political fiction): GREATER CHINA And Other Stories, 2007-2008

J.D. (law degree), George Washington University, Washington, DC, 1971-1975

Board, Journal of International Law & Economics (law review), 1974-1975

Admitted to the Bar: CT 1994, VA 1975

B.A. Government, Wesleyan University, Middletown, CT, 1967-1971

Exchange Student, Mount Holyoke College, South Hadley, MA, 1969-1970